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BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS

STATE OF IDAHO

In the Matter of the)	
License of:)	Case No. PSY-P4B-01-01-002
)	
EILEEN M. WRIGHT,)	FINDINGS OF FACT, CONCLUSIONS
License No. PSY-299,)	OF LAW AND PRELIMINARY ORDER
)	
Respondent.)	

This matter is before the Hearing Officer based upon the Amended Order to Show Cause and Notice of Hearing dated September 26, 2005, and filed by the Board of Psychologist Examiners for the State of Idaho. A hearing was conducted on the Order to Show Cause on October 13, 2005. The Board of Psychologist Examiners appeared in person, represented by Stephanie Guyon, Deputy Attorney General. Respondent appeared through her attorney, Edwin L. Littenecker, who participated by telephone.

Respondent did not file any affidavits or present any testimony in opposition to the affidavits filed by the Board of Psychologist Examiners.

At the hearing, Respondent stipulated she had not paid the

fine or costs and attorney's fees as ordered by the Board's Final Order and admitted no Petition for Judicial Review had been filed and no stay had been entered. Instead of presenting evidence, Respondent verbally raised legal challenges to the Board's proceeding and requested the opportunity to brief those issues.

Respondent's Memorandum in Opposition to Board's Order to Show Cause was faxed to the Hearing Officer on October 28, 2005. The response of the Board of Psychologist Examiners was received November 10, 2005. Respondent's Reply was received by the Hearing Officer on December 5, 2005.

FINDINGS OF FACT

The initial Order to Show Cause, dated August 18, 2005, alleged that Respondent failed to pay the Board ordered costs and attorney's fees of \$17,558.61 and a \$1,000 administrative fine within ninety (90) days of entry of the Board Order. A copy of the Board's Final Order, attached as Exhibit 1 to the Order to Show Cause, establishes that Paragraph 2.b ordered the Respondent to pay costs and attorney's fees of \$17,558.61 within ninety (90) days from the date of the Order. Paragraph 2.c ordered Respondent to pay a \$1,000 fine within ninety (90) days from the date of the Order.

In addition, after the filing of the first Order to Show Cause, an Amended Order to Show Cause dated September 26, 2005, was filed alleging that Respondent continued to practice psychology without a license after the Final Order was entered. That Amended

Order to Show Cause was supported by the Affidavit of Allen Funk and various attached exhibits.

Respondent stipulated she has failed to make the ordered payments. In her Brief, Respondent contends there was no proof by the Board that she had the ability to pay the costs and fees since her license was suspended by the Board and she is not employed.

The evidence presented at the evidentiary hearing on the original disciplinary complaint established that Respondent had significant assets including multiple horses and a ranch where she maintained her horses. The current proceeding is before the Board on an Order to Show Cause allowing Respondent the opportunity to present evidence on why additional disciplinary actions should not be imposed based upon her noncompliance with the Order. Respondent elected not to present any testimony or evidence and Respondent has failed to establish that she is unable to pay the ordered fine and costs and attorney's fees or that her non-compliance should be excused.

With respect to the allegation that Respondent continued to practice psychology after her license was suspended, the unrefuted Affidavit of Allen Funk establishes that Cathy Skiles, an employee of the Nez Perce County Sheriff's Office, had seen Dr. Wright beginning in May, 2005 as a new patient. That patient's written statement indicates Cathy Skiles was seen by Dr. Wright as a patient on May 2, 2005; May 10, 2005; May 24, 2005 and June 6, 2005. Another appointment was scheduled for June 17, 2005, which

the patient did not keep. The patient's written statement was attached as Exhibit A to Allen Funk's affidavit.

In addition, the Affidavit of Allen Funk establishes he personally went to the location of Respondent's office on July 7, 2005, and spoke to the receptionist who advised him Dr. Wright was out of town. Dr. Wright's office suite included a sign advertising her services in a window. Further, a licensed social worker, Ursula Shrattenholzer, who shared office space with Dr. Wright, confirmed to Mr. Funk that Dr. Wright was actively seeing patients at that office. Ms. Shrattenholzer's statement is attached as Exhibit B. Finally, the Affidavit establishes a citation was issued against Respondent for practicing without a license.

Respondent has failed to refute any of this evidence. The Hearing Officer finds the evidence presented by the Affidavit of Allen Funk establishes Respondent continued to practice as a psychologist after her license was suspended by the Final Order of the Board on April 22, 2005.

CONCLUSIONS OF LAW

Respondent raises various legal challenges to the Board's proceedings.

First, Respondent contends these proceedings are in the nature of contempt proceedings and argues there is no statutory authority for the Board to bring contempt proceedings. Respondent relies exclusively upon Idaho Code §54-2305 as the legal support for her argument.

Idaho Code §54-2305(c) and (d) grant the Board power to deny, approve, issue, revoke, suspend or renew licenses and to conduct hearings in connection with licensure and hearings upon complaints concerning violations.

In this case, the Final Order of the Board specifically provides for the imposition of further disciplinary sanctions if Respondent fails to comply with the Final Order. Paragraph 2.a of the Final Order provided that Respondent's license was suspended for period of five (5), "with two (2) years stayed conditioned upon her compliance with this Order." Paragraph 2.e further provided that, if Respondent failed to comply with the terms of her probation and the Order, the two (2) years stayed license suspension would be immediately imposed by the Board after notice and an opportunity to be heard.

This action is not a contempt action, but rather is an enforcement action for further disciplinary sanctions for non-compliance with the Final Order.

Second, Respondent argues there is no showing that Respondent is gainfully employed or capable of paying the fines and costs and fees. As previously noted, Respondent chose not to submit any testimony or evidence in opposition to the Order to Show Cause. The Order to Show Cause specifically provided Respondent with an opportunity to show cause why she could not pay the fines and costs and fees and she failed to do so.

The Hearing Officer does not accept Respondent's unsupported

contention that it was impossible for her to pay the fines and costs when her license had been suspended and she was not employed. As noted, the testimony at the original hearing established Respondent had significant assets at the time of the evidentiary hearing. Further, the evidence indicates she continued to practice after the Final Order was entered in any event.

Based upon Respondent's non-compliance with the Order to pay costs, attorney's fees and the fine, the Board has authority to impose further discipline by terminating the two (2) year stay on the suspension. Paragraph 2.d further provides authority to deny reinstatement in the future.

Third, Respondent contends that she is improperly subject to double jeopardy because there are pending criminal proceedings for continuing to practice without a license. Respondent has presented no legal authority that double jeopardy applies to administrative proceedings. The cases submitted by the Board establish otherwise. See, State v. Talavera, 127 Idaho 700 (S.Ct. 1995); State v. McKeeth, 136 Idaho 619 (Ct.App. 2001).

Respondent also cites Idaho Code §54-2311 which makes it a misdemeanor to practice psychology without a license. She argues only the county prosecutor can bring criminal charges. However, that argument ignores the additional language of the Psychologist Act which makes it illegal to practice without a license and allows for discipline based upon violation of the act. Idaho Code §§54-2303 and 54-2309(d). Further, such conduct violates the Final

Order of the Board and allows the Board to impose sanctions for non-compliance.

Finally, Respondent argues there is no proof she has practiced psychology. Again, the Affidavit to Allen Funk was admitted and uncontested. Mr. Funk was available for cross examination and Respondent elected not to cross examine Mr. Funk or present any evidence to refute the affidavit. That Affidavit establishes that there was a sign in the office advertising Respondent's services as a psychologist. A patient submitted a statement indicating she had received psychology services from Dr. Wright after the suspension. Finally, a licensed individual sharing space with Dr. Wright indicated that Dr. Wright was practicing as a psychologist. This evidence was unrefuted and is sufficient to support a determination that Dr. Wright practiced as a psychologist without a license.

RECOMMENDED ORDER

Based upon the foregoing, the Hearing Officer concludes that the Board of Psychologist Examiners has the factual and legal basis to enforce the terms of the Final Order and impose additional discipline upon Dr. Wright based upon her noncompliance with the Final Order.

DATED This 4 day of January, 2006.

JEAN R. URANGA

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Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 4 day of January, 2006, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by faxing and/or mailing copies thereof to:

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